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March 19, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of Inquiry
CS Docket No. 01-7 /

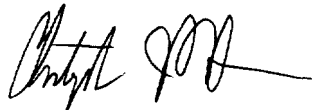
Comments of Cablevision Systems Corporation

Dear Ms. Salas:

Enclosed please an original and nine copies of Comments of Cablevision Systems Corporation in the above-referenced docket. Copies of these comments have also been forwarded on diskette to Royce Dickens of the Cable Services Bureau, Federal Communications Commission, and to International Transcription Service, 1231 20th Street, N.W., Washington, DC 20036.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,


Christopher J. Harvie

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Nondiscrimination in the Distribution of)	CS Docket No. 01-7
Interactive Television Services Over Cable)	
)	
Notice of Inquiry)	

COMMENTS OF CABLEVISION SYSTEMS CORPORATION

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March 19, 2001

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COMMENTS OF CABLEVISION SYSTEMS CORPORATION

Cablevision Systems Corporation (“Cablevision”), by its attorneys, hereby submits these comments in response to the Notice of Inquiry in the above-captioned proceeding.^{1/} Through various subsidiaries and affiliates, Cablevision provides cable television and cable programming services, cable modem service, telephony and other product and service offerings to subscribers and customers located principally in New York, New Jersey and Connecticut.

Cablevision is risking substantial capital and resources to develop and deploy interactive television (ITV) services. Providing such services has already proved to be expensive and technically complex, involving negotiations with literally dozens of suppliers of hardware, software, and applications, while the public demand for such services is wholly untested. At the same time, Cablevision will face competition in the provision of interactive services from DBS, DSL and broadcast platforms.

Cablevision is excited about the prospects for ITV and is developing the technical infrastructure, customer support structure, business models and offerings to support this next generation of television. Given ITV’s nascency, government regulation at this early stage would

^{1/} Nondiscrimination in the Distribution of Interactive Television Services Over Cable Notice of Inquiry, CS Docket No. 01-7 (rel. January 18, 2001) (“Notice”).

be counterproductive and undercut the FCC's goals of facilitating broadband investment and the digital TV roll-out, as well as encouraging programming diversity. Indeed, adding layers of government involvement to the already daunting task of deploying ITV would seriously distort the market, and serve only to delay the rollout of these promising services.

INTRODUCTION AND SUMMARY

Cablevision has invested billions of dollars to upgrade its network in order to provide its subscribers with the next generation of advanced communications services, including digital services such as digital video, telephony, and high speed Internet access. This fall, Cablevision will deploy digital set-top boxes that will give subscribers the ability to use this advanced infrastructure to obtain a wide array of interactive television (ITV) services, including movies on demand, an interactive programming menu, e-mail and access to Internet-related content, video games, and customized local and regional interactive content. Cablevision is currently refining the technology for public release and defining relationships with vendors for ITV products and services.

Cablevision's entry into ITV is a risky, complex undertaking that presents several formidable challenges. First, the demand for ITV services is completely unproven. There is no consensus as to what constitutes the ITV market, how consumers will respond to the slate of ITV offerings being unveiled by Cablevision, or whether there will be a sustainable level of subscriber interest in these new services. Given that ITV is a new service, it is critical that the customer's first experience is positive, and a smooth functioning technology is key to accomplishing this objective.

Second, provisioning ITV services involves numerous component parts. Every link in the interdependent chain of technology, from headend equipment, network infrastructure and

signal transport facilities to software, applications, and content must function properly in order for ITV to have even a chance of winning subscribers. Coordinating and integrating the various components of ITV service in order to provide viewers a consistently seamless, transparent and dependable experience presents a unique challenge for Cablevision and other cable operators.

Third, ITV will require an extraordinary level of customer support. Most consumers have come to expect television to be a reliable and uncomplicated user experience. Less than half the subscribers to whom Cablevision's ITV service will be deployed own PCs, and thereby lack significant experience with interactive technology. Cablevision recently decided to defer deployment of the first set of its digital boxes from the beginning of this year until the fall, in order to ensure that it has the appropriate customer service and operational support infrastructure needed to help acclimate subscribers to the new services that will be introduced.

Fourth, Cablevision already faces substantial competition from other providers of ITV services. DBS providers already are competitors in the ITV market, offering an array of interactive services to consumers nationwide. DSL providers, broadcasters and broadband fixed wireless companies also are viewed as potential forces in the ITV market. Movie studios and other content providers have plans to use the Internet to offer video on demand and other interactive services to consumers. Further, consumers may soon use their PCs to obtain ITV services from a Web site over a broadband Internet connection, and then shuttle the ITV content to a digital television set via a high-speed, high capacity internal home network connecting all of their digital devices.

The risks and challenges associated with rolling out a broad complement of sophisticated new ITV services to thousands of subscribers are daunting enough in the absence of government regulation. Regulation of ITV service is unnecessary -- given the nascency of the market and

the evidence of competitive alternatives – and it would be counterproductive. It would inevitably slow down deployment and artificially constrain the market by adding to the already formidable complexity of deploying ITV services, without providing any measurable benefit. Furthermore, it would compromise Cablevision’s ability to ensure that these services perform as consumers expect and to evolve ITV in response to changing demand.

While the Notice hypothecates that unaffiliated ITV content and applications providers may be unfairly disadvantaged in the marketplace, such concerns are wholly speculative at this early stage of the ITV business. Indeed, Cablevision is exploring partnerships with a range of vendors in order to provide its subscribers with access to a diverse array of ITV content and services. Moreover, in its recent decision in Time Warner Entertainment Co. v. Federal Communications Commission,² the D.C. Circuit cautioned against imposing regulations that affect cable operators’ First Amendment rights on the basis of speculative harms and conjectural risks. Particularly at this juncture, the Commission should reject calls for regulatory intervention based upon speculative concerns and instead allow the marketplace -- and not government regulation -- to drive the development of ITV.

² Time Warner Entertainment Co. v. Federal Communications Commission, No. 94-1035, 2001 WL 201978 (D.C. Cir. March 2, 2001)(“Time Warner v. FCC II”).

I. THE SPEED AND SUCCESS OF CABLEVISION'S PLANS TO ROLL-OUT ITV SERVICES WOULD BE JEOPARDIZED BY REGULATORY INTERVENTION INTO THE EVOLVING ITV MARKETPLACE

The interactive television services that Cablevision plans to launch this fall are a natural outgrowth of the company's earlier efforts to make two-way capabilities and customization features a part of its overall service offerings.^{3/} In its the depth and breadth, however, the company's new commitment to interactivity is a marked departure from its previous initiatives.^{4/} Cablevision's rollout of ITV is possible only as a result of years of planning, billions of dollars of investment, and the rebuild and upgrade of 34,000 miles of network plant to a 750 MHz, 500 homes per node hybrid fiber coaxial infrastructure that provides two-way capabilities to every home.

Cablevision is excited about the prospects and possibilities for its ITV service, but the successful deployment is dependent on working through numerous partnerships and technical issues, as well as responding effectively to customer requirements. Given this early stage of deployment, there are substantial challenges associated with deploying a new set of services that fundamentally alters the way in which viewers use and interact with their television sets.

Furthermore, because ITV is just emerging, neither platform nor content providers know what

^{3/} In the early 1990s, Cablevision introduced impulse pay-per-view (PPV) service, a precursor to video-on-demand, to its New York City subscribers. By pushing a series of buttons on their remote controls, subscribers could obtain PPV movies without using the telephone. Later, some Cablevision viewers of New York Knicks and New York Rangers home games gained the opportunity to use their remotes to select their own camera angle during games. Cablevision also provides some interactive and customized graphic and textual content in conjunction with several of its local programming services, including News12, MetroLearning, and MetroGuide.

^{4/} See "Cable's growth engine misfiring," Electronic Media, February 26, 2001 at 23 (quoting Merrill Lynch analyst Jessica Reif Cohen: "Cablevision could leapfrog the cable industry with a multitude of new interactive services"). See also "At last, t-commerce," Long Island Business News, January 12-18, 2001 (quoting industry analyst Jack Myers: "Cablevision has taken a very aggressive position on digital and interactive television").

services and revenue models will be successful. The magnitude of these challenges, the nascency of ITV services, and the competition that Cablevision will face from other providers of interactive services argue irrefutably for a policy of allowing market forces and consumer behavior to guide the pace and direction of ITV deployment, free of government intervention.

A. Cablevision's ITV Platform Will Provide Subscribers with Access to a Broad Complement of ITV Services

Cablevision will provide ITV by combining the capabilities of its upgraded plant with advanced digital set-top boxes that it is developing jointly with Sony. Cablevision expects to spend approximately \$1 billion on the boxes alone.^{5/} They will establish a home gateway to a suite of ITV services and capabilities, and will "put the consumer in control of the services on their television set."^{6/} The boxes will be built around OpenCable standards, enabling them to accommodate new applications and technological developments.^{7/} They will also include a high-speed, high-capacity digital interface, the IEEE-1394 "firewire," that can enable subscribers to

^{5/} The Sony boxes will offer an easy-to-navigate graphical user interface designed to facilitate and simplify customer use of the various ITV services offered over Cablevision's network. The boxes themselves contain an array of sophisticated technology. Key features include an 860 MHz tuner, a 300 MIPS processor, a digital decoder, 32 megabytes of DRAM and a 16 megabyte flash memory, a smart card interface, and both DOCSIS and Digital Audio-Visual Council (DAVIC) modem chips. The box also contains a real-time embedded operating system from Wind River Systems, a Spyglass browser that supports ATVEF triggers, video-on-demand software from SeaChange, conditional access technology from NDS, and Sony middleware. See generally, "Sony to spin next-gen set-to for Cablevision," Digital Broadcasting.com, January 9, 2001; "Sony to Demonstrate Next-Generation Interactive Digital Cable Receiver at Consumer Electronics Show," Press Release, January 5, 2001, http://biz.yahoo.com/bw/010105?nv_cablevi.html; "Hildenbrand breaks the mold," Communications Engineering & Design, November 2000, <http://www.cedmagazine.com/ced/0011/113.htm>.

^{6/} "Sony, for First Time, to Sell Set-Top Boxes to Cablevision," New York Times, September 17, 1999 (quoting Cablevision CEO James L. Dolan).

^{7/} See id. (quoting Cablevision executive vice president for engineering and technology: "We've been almost evangelical -- maniacal, even -- about 'open' and open standards" in the boxes). See also "Cablevision to Buy 1 Million Sony Digital Boxes," CableWorld, September

interconnect all digital devices within their home, and thereby transfer broadband and interactive content seamlessly between digital appliances.

Using this sophisticated ITV platform, Cablevision plans to offer a range of services. Some of these services will be offered contemporaneously with the deployment of the digital boxes, while others are likely to be phased in as ITV provisioning processes and platform capabilities are further refined and developed.

Movies and Video on Demand (VOD). By clicking on a tool bar labelled “Movies & Videos,” subscribers will have instant access to a broad library of movies, television shows and videos that will reside in Cablevision’s server. Subscribers can browse the top picks and recent releases available to VOD customers, or they can review the entire storehouse of available titles alphabetically or by category and genre. Because Cablevision’s server establishes a separate video stream for each on-demand movie request, subscribers can fast-forward, rewind, and pause titles they are viewing; they also can begin watching a movie on their main television set, pause it, and move to a second set in another room and continue watching from where they left off.

Customizable Interactive Programming Menu. By clicking on a tool bar labelled “Video Programming,” subscribers will gain access to an interactive programming menu that can be readily organized by the customer into displaying programming options according to time of day, categories (e.g., sports or children’s programming) or customized according to a subscriber’s favorite programs and categories. The menu provides program descriptions and can remind viewers of when a favorite program is about to start.

20, 1999. The Sony middleware housed in the box will permit the incorporation of additional server-based ITV applications and features.

Expanded Programming Choices. Subscribers will be able to receive dozens of new programming channels and movie options, as well digital music channels.

Games. By clicking on a tool bar labelled “interactive,” subscribers can obtain access to a wide variety of interactive video games over their television sets.

E-mail and Web Content. A “mail center” toolbar enables subscribers to check and write e-mail via their TV sets, using either an on-screen cursor or an optional wireless remote keyboard. Subscribers also will be able to obtain access to Web sites and Internet content, which is customized and reformatted for viewing and browsing on television screens.^{8/} Consistent with its commitment to local content, Cablevision will focus especially on providing its ITV subscribers with access to community-based and regional Web content. For example, subscribers eventually could have the ability to customize a “first screen” that would furnish them with local news, weather and traffic, as well as community information such as school lunch menus and town meeting agendas.^{9/}

Other potential services that may be offered over Cablevision’s ITV platform include personal video recorder (PVR) technology that will enhance the ability of subscribers to watch television according to their own schedule. Cablevision also will aim to offer subscribers t-commerce opportunities, that could enable viewers to use their remote control to respond to interactive advertisements and shop online via their television sets. In addition, the use of the “firewire” digital link could provide subscribers with the capability to connect their television

^{8/} “Digital Dreams,” Newsday, October 2, 2000, at C10 (“Instead of Web pages, which are hard to read and manipulate on a TV set, Cablevision is looking at providing thousands of Internet-related pages and services in a format that is TV screen-friendly”).

^{9/} See id.

sets to other digital devices and smart appliances in the home, such as home security systems, camcorders, and PCs.

While Cablevision has made considerable progress toward the goal of rolling out a new generation of communications services to its subscribers, there is still considerable developmental work to be done. The company is currently in the process of beta-testing its proposed ITV offerings, with the goal of beginning to phase-in digital box deployment this fall. While Cablevision is committed to making the promise of interactive television service a reality for its subscribers, undoubtedly, additional issues and challenges will arise between now and then.

B. The Risks and Challenges Associated with the Deployment of ITV Services Underscore the Need to Allow Market Forces to Guide the Roll-out of Interactive Television

The deployment of ITV services presents Cablevision with a unique set of challenges, any one of which counsels against government intervention in the marketplace.

First, while Cablevision believes consumers will embrace interactive television, ITV is a largely untested undertaking. Cablevision has already invested billions of dollars, nearly three years of effort, and substantial company resources to bring its New York area network to the point at which it is technically capable of delivering ITV services to subscribers, with no guarantee of return on investment. Additional significant investments will be required to bring ITV services to market. Cablevision is confident in ITV but flexibility will be essential to shape the product offerings, services and revenue models to meet consumer needs and provide a sustainable business model.

There is no proven, “off the shelf” method for furnishing and marketing interactive television services. While the technology for providing interactive services “has stabilized, it’s

still not clear what people want to do with their television sets other than sit back, relax and watch . . .”.^{10/} Because of this uncertainty, content providers and other potential vendors of ITV services are cautiously exploring their development of content and services. With so much uncertainty, defining the relationships between platform and content providers will take time. As with any consumer product, the success of ITV depends upon how well it meets consumers’ needs and interests. It will be critical for Cablevision to have the flexibility to change and adapt to marketplace conditions and consumer behavior. Subjecting Cablevision and other ITV providers to a regulatory regime that presupposes a particular industry structure or business model, as the Notice proposes, can only slow ITV deployment to consumers and discourage the offering of new services.

Second, the sheer quantity, diversity and complexity of network facilities, customer-premises hardware, software, applications and content that must be integrated in order for Cablevision to furnish ITV service presents a tremendous challenge. The suggestion in the Notice that ITV can be broken down into three building blocks understates the quantity and complexity of the components of offering ITV service.¹¹ These include:

- headend server and software, and network infrastructure, and signal transport facilities;
- upstream and downstream signalling capacity;
- network management and signal security;
- set-top box (STB) hardware and operating system, and middleware for the STBs;
- STB-based ITV applications such as browsers, cable modems and PVRs;
- headend server-based ITV applications such as video on demand;
- Web-based ITV applications;

^{10/} “Clicking Outside the Box,” New York Times, September 20, 2000. See also “Will People Clamor for ITV,” Wired News, March 7, 2001 (“But do people want ITV? Well there’s the rub - nobody here really knows”).

¹¹ See Notice at ¶¶10-13.

- customer service and operational support;
- storage and caching appliances;
- interactive content creators and providers;
- video programmers; and
- advertisers and t-commerce merchants.

Close coordination and integration of these multiple layers of network technology and content is essential to ensure that all ITV services and applications provided over Cablevision's network are compatible with all of the components of its platform.^{12/} Without such integration, services will be inaccessible to subscribers or fail to reach them in the intended manner. As discussed previously, it is critical to the long term success of ITV that customers have a positive first experience with the new services. In this type of experimental environment, voluntary relationships governed by contractual arrangements between Cablevision and its ITV technology, content and applications partners are far preferable to forced arrangements dictated by regulatory requirements.

Third, customer service and operational support activities are critically important in connection with the roll-out of ITV, given the sophisticated features and functionalities being offered to subscribers and the relative lack of experience with interactivity among a substantial segment of Cablevision's subscriber base. Cablevision estimates that the Internet is utilized by 40-45% of its subscriber base, meaning that a significant portion of our customers to whom ITV services will be made available have little previous experience with interactive technology.^{13/}

Unlike the online market, where PC-based users have come to take the rapid pace of technology and new services for granted, TV viewers are accustomed to changes that are

^{12/} "Integration Issues--Interactive TV's Goblin," Multichannel News, October 30, 2000.

^{13/} "Cablevision Steps to Its Own Drummer," Multichannel News, May 8, 2000.

more evolutionary than revolutionary. As a consequence, acclimating the audience to applications, such as Web-enhanced content and e-commerce, is likely to take time.”^{14/}

The importance of customer service and operational support issues is critically important to the successful introduction of the service, and Cablevision is focusing on bolstering its customer service infrastructure for this purpose. The company has decided to devote more time and resources to training and educating customer service representatives and marketing personnel in order to facilitate a smooth ITV roll-out. Imposing regulation now would distract Cablevision and other operators from the goal of fostering a user-friendly transition to ITV and focus them instead on the task of complying with regulations that may be incompatible with the goal of achieving a smooth and swift roll-out of ITV.^{15/}

Fourth, ITV entails unique content presentation challenges. Content formatted for the Internet and Web sites cannot automatically be presented on television screens. Internet graphic and textual content must be specifically reformatted for display on television screens in order to avoid resolution flaws that would discourage subscriber use and interaction with such content.^{16/} For instance, most content on the Internet is designed for viewing on a PC monitor, which is typically 10-12 inches from the viewer. A TV viewer, however, is normally 6-10 feet from the monitor. These content presentation issues illustrate the need for cable operators to be able to

^{14/} “The Many Roads to Interactive TV,” CTAM Magazine, Fall 2000, at 11.

^{15/} Cf. Notice at ¶ 33 (“Any regulatory requirements that we might consider adopting with respect to ITV services would be triggered by the voluntary decision by a cable operator, or cable operator’s ITV affiliate, to provide its own ITV services”).

^{16/} “Hildenbrand breaks the mold,” Communications Engineering & Design, November 2000, <http://www.cedmagazine.com/ced/0011/113.htm> (“Because Internet content looks like hell on TV, and was really designed for a completely different user relationship, there’s got to be some sort of proxy device, or transcoder for normal Internet content to go through”); Bob O’Donnell, “You need to look beyond the hype to see the truth behind set-top boxes,” InfoWorld.com, July 10, 1999 (“TVs were not designed for and do not work well as data monitors. . . Viewing

use their business and technical judgment with regard to the selection of ITV content and applications that is provided over their networks.

Fifth, reliability and seamless transparency will be critical to the success of ITV service. PC and Internet users have grown accustomed to error messages arising due to incompatibilities between an application and the user's operating system or hardware, and also have grown to tolerate "crashes" due to network or remote server problems. The television experience, however, is generally free of such errors and unwanted interruptions, and the degree to which some consumers utilize ITV services available to them could hinge on how skillfully providers build upon the transparency of today's television service.

ITV applications that "trap" users in a link or services that fail to function properly due to incompatibilities (known or unknown) with platform technology could undermine consumer acceptance and usage of ITV by replicating the "buggy-ness" of the PC experience or the complexity and confusion associated with VCRs. One ITV industry participant has stated that:

Right now today people are not aware that there are an unbelievable number of interactive triggers going through their programming services right now, that there are dozens of advertisers who put triggers in which have these horrible experiences where you take someone to a web site and there's no 'back to TV' button, or it is a 'picture in picture' that is about a postage stamp size, those kind of things. . .".^{17/}

ITV service providers must offer television viewers PC-type functionality, but in a more simple, stable and latent manner. Viewers are not going to want to "reboot" their TV sets frequently because of code incompatibilities, error messages or site traps.

anything other than a standard resolution video image on a TV is ultimately just an exercise in frustration").

^{17/} "T-Commerce: Doing Business Over Television," Cable 2000, National Cable Television Association, May 7-10, 2000, Tr. at 42 (quoting Richard Fisher, President of Respond TV).

TV has always had a high QOS [quality of service]. People don't want to learn what a HTTP 404 is or DNS error is. We have got to keep that consumer trust here and I think that one of the things we have seen with kind of the Internet style plays on TV is you end up with potentially a disenfranchised viewer who just decides that they just don't want to use that thing anymore -- the postage stamp video, you know, where did I go? This link is broken. That doesn't mean anything to me, especially for the broader viewing audience out there.^{18/}

The public interest will not be served, and consumer acceptance of ITV services will be undermined, if regulation forces Cablevision to offer ITV applications which may be incompatible with platform technology or inconsistent with the objective of providing consumers with easy, uncomplicated and user-friendly ITV experiences.

Sixth, Cablevision must have the ability to monitor and ensure the quality of the ITV services being furnished over its network. Notwithstanding the dozens of technology, applications, and content providers contributing to Cablevision's ITV platform, it is Cablevision that will be held accountable by its customers for any failures or flaws in the functioning of ITV services offered over its platform.^{19/}

Today, for example, a t-commerce buying experience usually involves getting off the couch and telephoning a home shopping channel. In that environment, the shopping channel's responsibility for effectuating the transaction is easily and clearly conveyed to the viewer. In the ITV context, by contrast, a t-commerce transaction might involve a viewer watching a show, clicking on an interactive advertisement, linking to a content site, selecting a product by pushing a button on the remote control, and then inputting credit card and billing information. If the product being purchased is a downloadable music file or video game, the consumer might well have an expectation of prompt and immediately electronic delivery of his or her purchase. In

^{18/} Id. at 43-44 (quoting Joel Hassell, President and CEO of Intelocity).

^{19/} Id. at 52 ("My guess is many calls will come into the cable operator to, you know, I didn't

this scenario, the responsibility for effectuating the transaction is more dispersed than in a conventional home-shopping channel telephone transaction, but the customer is naturally likely to look to the cable operator to address and resolve any glitches or breakdowns.

Particularly in the early stages of deployment, Cablevision can more effectively respond to ITV service interruptions and glitches -- and even anticipate and prevent such problems before they occur -- if the company is able to freely choose not only its technology and content partners, but also the services and applications being provided over its network. Voluntary arrangements among ITV technology, applications and content providers will enable cable operators to contractually ensure accountability and responsiveness throughout the ITV platform's component and content chain. The end result will be to provide consumers with ITV service that is more reliable, responsive and user-friendly.

II. THE FCC SHOULD REFRAIN FROM REGULATING A CABLE OPERATOR'S PROVISION OF ITV SERVICES

A. The Marketplace Will Feature a Variety of Competitive ITV Platforms and Providers

Cablevision faces not only a set of unique risks and special challenges associated with the deployment of interactive television services, it also must confront vigorous competition from variety of competing ITV platforms and providers. The competitive landscape that is emerging for ITV suggests that consumers will have a broad choice of ITV distribution paths and content providers.

DBS companies are already offering their subscribers an array of ITV services and features. In addition to an electronic programming guide, DirecTV offers its subscribers PVR capabilities from TiVo, Microsoft's enhanced television service, Ultimate TV, and AOLTV. The

get my coupon, I didn't get my music file, I didn't get -- somehow, things of that nature").

company also offers its own branded interactive service, DirecTV Interactive, which features interactive enhancements to select programming channels, dedicated interactive news and information channels, and dedicated interactive shopping channels.^{20/} EchoStar also has entered into arrangements with various ITV software and applications providers that will enable the company to offer a variety of interactive services to its subscribers.^{21/}

Interactive television services are also being provided over DSL facilities.^{22/} Motorola recently announced the commercial deployment of a new set-top box designed to support the provision of ITV services over DSL lines,^{23/} and Blockbuster and Enron have conducted a four-city trial of video-on-demand over DSL.^{24/} While the Blockbuster/Enron partnership will dissolve upon completion of the trial, both companies have indicated that the trial validates the potential for VOD and have stated that they will continue efforts to develop entertainment-on-demand services.^{25/} Other recent entrants into DSL-based interactive television services include

^{20/} See <http://www.directv.com/about/abouttablepages/0,1271,322,00.html>;

^{21/} See "The Many Roads to Interactive TV," CTAM Magazine, Fall 2000, at 10-11.

^{22/} See "Volume Rising For Interactive DSL TV," Broadband Week.com, December 2000, www.broadbandweek.com/news/0012/0012_telecom_third.htm.

^{23/} "Motorola introduces DSL-based set-top box," ITV Report, January 4, 2001, www.itvreport.com/news/0101/010401motorola.htm.

^{24/} "Blockbuster tests video streaming," CNET News, December 19, 2000; "Video on Demand Arrives - Sort Of," Wall St. Journal, January 29, 2001.

^{25/} "Analysts Bullish on Enron's Content Delivery Plans," Reuters, March 15, 2001; "Enron Expanding Entertainment On-Demand Service: Terminates Exclusive Relationship With Blockbuster Inc.," Press Release, March 9, 2001, biz.yahoo.com/prnews/01309/daf035.html; "Blockbuster Inc. to Continue to Develop Entertainment On-Demand Service; Terminates Exclusive Services Agreement With Enron," Press Release, March 9, 2001, biz.yahoo.com/prnews/010309/daf018.html.

Alcatel and Oracle.^{26/} Meanwhile, substantial progress has been made toward delivering a full slate of ITV services via broadband wireless facilities.^{27/}

In addition, some broadcasters are launching plans to use part of the digital spectrum to offer interactive services. Wave Express, for example, has developed a smart card that allows for the provision of interactive services over digital broadcast facilities.^{28/} Analysts expect broadcasters “to become more of a threat by migrating into the traditional area of cable networks’ strength -- targeting programs to niche audiences -- via multicasting and including interactive data and services along with their video content.”^{29/}

MVPDs and broadcasters are not the only providers eyeing the ITV market. As noted above, both Microsoft and AOL have developed interactive television offerings that build upon their strengths in the online services marketplace.^{30/} Moreover, other companies also have signalled their intention to use the Internet to provide consumers with ITV services such as video-on-demand. Several motion picture studios, including Disney, have signaled plans to use the Internet as a distribution platform for delivering movies on demand.^{31/} Studios have licensed films to Internet-based distributors such as Intertainer.com, which provides on-demand movies over DSL lines and

^{26/} See “Volume Rising For Interactive DSL TV,” Broadband Week.com, December 2000, www.broadbandweek.com/news/0012/0012_telecom_third.htm.

^{27/} “Wireless Users Gain Interactive TV Access,” Wireless NewsFactor, November 27, 2000, www.wirelessnewsfactor.com/perl/story/5520.html.

^{28/} “For Wavexpress, ‘Datacasting’ Is a Digital Stepping Stone,” Business Week Online, September 7, 2000; “It Takes A Vision: ITV... In a Few Years,” CTAM Magazine, Fall 2000, at 50; “TV stations turn on high-speed Net downloads,” CNET News, January 17, 2001; “PBS to broadcast interactive show to PCs,” CNET News, March 2, 2001.

^{29/} “New Services - New Revenue Streams,” CTAM Magazine, Fall 2000, at 22.

^{30/} See “Microsoft partners on interactive TV project,” CNET News, June 12, 2000; “The Red Eye: AOL Does ITV,” Redherring.com, July 11, 2000.

^{31/} “Studios Have Their Own Movies-on-Demand Plans,” Wall Street Journal, January 29, 2001 at B1; “Studios ready projections to show movies on the Net,” CNET News, February 15, 2001.

through set-top boxes such as WebTV.^{32/} Cablevision's digital set-top box partner, Sony, has announced plans of its own to develop an Web-based, movies-on-demand service known as MovieFly.^{33/} Sony has specifically stated that this MovieFly service will be "Internet-based, rather than cable-based."^{34/}

Indeed, it is certainly possible and even likely that a robust and diverse complement of ITV services will be available from providers over the Internet and accessible via PCs.^{35/} Even if consumers retain their preference for viewing and interacting with ITV content on a television screen, the likely proliferation of high-speed, high-capacity internal home networking devices such as the IEEE-1394 or universal serial bus (USB) could enable consumers to access ITV content via the Internet using a PC and then transfer it to digital television set or set-top box^{36/}

^{32/} See "Alliance To Send Video-On-Demand on Web," New York Times, Aug. 14, 2000; "Video on Demand Arrives - Sort Of," Wall St. Journal, January 29, 2001.

^{33/} Studios Have Their Own Movies-on-Demand Plans," Wall Street Journal, January 29, 2001 at B1; "Studios ready projections to show movies on the Net," CNET News, February 15, 2001.

^{34/} "Sony's Set-top: No Black Beauty," CableWorld, January 15, 2001.

^{35/} See e.g. "Intertainer Covers Broad Range of Delivery, Content," May 8, 2000, Extra Tech NCTA/Cable 2000 ("Intertainer delivers premier movies, TV shows, music videos, original content and games on demand through an elegant interface to television or computers by way of any two-way pipe fat enough to handle the data stream").

^{36/} See e.g. "Intel CEO looks outside with PC peripherals," CNET News, January 5, 2001 (noting Intel demonstration of "home 'media center' appliances that would juggle digital photos, DVD and downloaded movies, digital audio files and other content for display through various devices connected to a home network"); "It Takes A Vision: ITV. . . In a Few Years," CTAM Magazine, Fall 2000, at 50 (Interview with Razorfish Vice President David Jensen: "Over time, we see a world in which you're just going to have screens. You'll go down to Screens R Us and you'll buy your 3X6" wireless screen, your 14" wired screen, and your 40" or 60" square screen to hang on your wall. And there will be only a pipe that comes to that screen. It can be a wireless pipe or it could be a fixed-wired pipe. It can be a cable pipe, a telco pipe, or a satellite pipe, but it will deliver content to that screen.")

B. There Is No Justification for Government Regulation of ITV Services Provided over Cable Systems

The Notice itself acknowledges that “the nature of ITV services is evolving rapidly, with constant and continuous technological changes and business models making it difficult to specify a definition.”^{37/} This is clearly not a description of a marketplace that is suitable or appropriate for government intervention. As demonstrated above, the availability of competitive alternatives to cable’s ITV services is further evidence of the inappropriateness of regulation.

The predicate for government intervention articulated in the Notice rests upon three separate contingencies, none of which is remotely prevalent.^{38/} As the D.C. Circuit recently held, regulation of First Amendment speakers cannot be supported by speculative harms and conjectural risks of anti-competitive behavior.^{39/} That admonition is applicable with equal force in the context of this proceeding, as is the court’s warning that regulation may not be grounded in stale or out-of-date assessments of the marketplace.^{40/}

In fact, there is no evidence that any of the traditional prerequisites for government regulation are present with respect to cable-provided ITV. Since the market for ITV services is nascent and unformed, there is no basis for concluding that cable operators could exercise market power over ITV. Likewise, there is no discernable market failure to be addressed and resolved by government regulation. In fact, there is ample proof that a variety of ITV platform and

^{37/} Notice at ¶ 6.

^{38/} See Notice at ¶ 1 (“If it turns out that only one delivery platform in each geographic area has the capability to provide the most attractive ITV services package, and if the platform provider is vertically integrated with an ITV service provider, then there would be the potential for anticompetitive behavior”)(emphasis added).

^{39/} Time Warner v. FCC II, supra n.2, 2001 WL 201978, at *7, 9-10.

^{40/} Id., at *7. See Notice at ¶ 2, (“If the same factual predicates that Congress cited in the 1992 Cable Act were to apply to a distribution platform delivering ITV services, then some regulation . . . might be warranted”).

content providers are competing vigorously to offer ITV services to subscribers.^{41/} Nor is there a basis for concluding that government regulation will more effectively promote the public interest than the workings of the marketplace. To the contrary, there is a substantial likelihood that government regulation would harm the public interest by delaying the roll-out of ITV service or artificially freezing into place an ITV business model that does not maximize consumer welfare.

Speculative fears regarding the ITV marketplace ring hollow against the marketplace realities of a nascent service. Further, the cable industry's OpenCable initiative, the pervasiveness of middleware in set-top boxes deployed to enable the provision of ITV service, and the continued growth and prevalence of open standards to encourage ITV applications development further diminish the likelihood that any single provider could obtain market power in ITV.^{42/}

It is impossible (and unnecessary) for the government at this juncture to attempt to determine -- and then direct -- the manner in which the ITV service market should unfold, since that issue involves a slew of business, technical, marketing and customer service questions that have yet to be answered. Indeed, those questions have barely begun to be posed to the marketplace. Hypothecating a particular model, as the Notice has done, and imposing it on cable operators even before the service is available in the marketplace can only impede the deployment of ITV if not kill it outright. The public interest is far more likely to be served if consumers and the marketplace decide how ITV evolves.

^{41/} See supra at Section II.A.

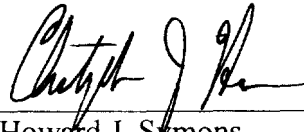
^{42/} See e.g. "Middleware: Over the OS, Under the Apps," Multichannel News, October 2, 2000.

CONCLUSION

In its effort to provide subscribers with ITV services, Cablevision faces significant challenges, as well as vigorous competition from other ITV platform and service providers. Government intervention in the ITV marketplace at this juncture is unnecessary and unjustified. Regulation would likely slow, rather than spur, the deployment of ITV services to consumers. Accordingly, the Commission should allow market forces, rather than government regulation, to guide the rollout of interactive television to consumers.

Respectfully submitted,

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